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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TINA COLEMAN,

Plaintiff,

vs.

DANIEL N. GORDON, P.C., and ASSET  
ACCEPTANCE, LLC,

Defendants.

No. CV-10-428-EFS

ANSWER TO COMPLAINT

Daniel N. Gordon, P.C., by and through its attorney of record Kevin J. Curtis  
of Winston & Cashatt Lawyers, a Professional Service Corporation, respond to  
Plaintiff's Complaint as follows:

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ANSWER TO COMPLAINT  
PAGE 1

*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
1900 Bank of America Financial Center  
601 West Riverside  
Spokane, Washington 99201  
(509) 838-6131

1 **NATURE OF ACTION**

2 1. This answering defendant admits the complaint alleges violations of  
3 the Fair Debt Collection Practices Act ("FDCPA") in paragraph 1. This answering  
4 defendant denies the remainder of the allegations in paragraph 1.  
5

6 **JURISDICTION AND VENUE**

7 2. This answering defendant admits the allegations in paragraph 2.

8 3. This answering defendant admits the allegations in paragraph 3.  
9

10 **PARTIES**

11 4. This answering defendant denies the allegations in paragraph 4.

12 5. As to the allegations in paragraph 5, they are allegations of law and do  
13 not necessitate an answer and, therefore, this answering defendant denies the same.  
14 To the extent an answer is required, this answering defendant lacks sufficient  
15 information to admit or deny and therefore denies the same.  
16

17 6. As the allegations contained in paragraph 6 are not directed to this  
18 Defendant, this answering defendant deems that no responsive pleading is  
19 necessary. To the extent that an answer is required this answering defendant  
20 lacks sufficient information to admit or deny the allegations contained in paragraph  
21 6 and, therefore, denies the same.  
22

1           7. As the allegations contained in paragraph 7 are not directed to these  
2 Defendants, this answering defendant deems that no response is necessary. To the  
3 extent a response is required, this answering defendant admits that Asset  
4 Acceptance LLC is a Delaware limited liability company and lacks sufficient  
5 information to admit or deny the remaining allegations in paragraph 7 and,  
6 therefore, denies the same. Additionally, to the extent they are allegations of law,  
7 they do not necessitate an answer, and therefore this answering defendant denies  
8 the same  
9  
10

11           8. This answering defendant admits the allegations in paragraph 8.

12           9. This answering defendant admits the allegations in paragraph 9.

13           10. This answering defendant denies the allegations in paragraph 10.

14           11. This answering defendant denies the allegations in paragraph 11.

15           12. This answering defendant denies the allegations in paragraph 12.

16           13. As to the allegations in paragraph 13, they are allegations of law and  
17 do not necessitate an answer; therefore, this answering defendant denies the same.  
18  
19 To the extent an answer is required, this answering defendant denies the allegations  
20 in paragraph 13.  
21  
22  
23  
24

1           14. As to the allegations in paragraph 14, they are allegations of law and  
2 do not necessitate an answer; therefore, this answering defendant denies the same.  
3 To the extent an answer is required, this answering defendant denies the allegations  
4 in paragraph 14.  
5

6           15. As to the allegations in paragraph 15, they are allegations of law and  
7 do not necessitate an answer; therefore, this answering defendant denies the same.  
8

### 9                           **FACTUAL ALLEGATIONS**

10           16. This answering defendant admits that plaintiff is a natural person  
11 obligated, or allegedly obligated to pay a debt owed or due. This answering  
12 defendant denies the remainder of the allegations in paragraph 16.  
13

14           17. This answering defendant lacks sufficient information to admit or  
15 deny the allegations contained in paragraph 17 and, therefore, denies the same.

16           18. This answering defendant denies the allegations in paragraph 18.

17           19. As the allegations contained in paragraph 19 are not directed to this  
18 Defendant, this answering defendant deems that no response is necessary. To the  
19 extent an answer is required, this answering defendant lacks sufficient information  
20 and knowledge to admit or deny the allegations in paragraph 19 and, therefore,  
21 denies the same.  
22

1           20. As the allegations contained in paragraph 20 are not directed to this  
2 Defendant, this answering defendant deems that no response is necessary. To the  
3 extent an answer is required, this answering defendant lacks sufficient information  
4 and knowledge to admit or deny the allegations in paragraph 20 and, therefore,  
5 denies the same.  
6

7           21. As the allegations contained in paragraph 21 are not directed to this  
8 Defendant, this answering defendant deems that no response is necessary. To the  
9 extent an answer is required, this answering defendant denies the allegations in  
10 paragraph 21.  
11

12           22. This answering defendant admits the allegations in paragraph 22.

13           23. This answering defendant denies the allegations in paragraph 23.

14           24. This answering defendant denies the allegations in paragraph 24.

15           25. This answering defendant denies the allegations in paragraph 25.

16           26. This answering defendant denies the allegations in paragraph 26.

17           27. This answering defendant denies the allegations in paragraph 27.

18           28. This answering defendant denies the allegations in paragraph 28.

19           29. As to the allegations in paragraph 29, they are allegations of law and  
20 do not necessitate an answer; therefore, this answering defendant denies the same.  
21  
22

1 To the extent an answer is required, this answering defendant denies the allegations  
2 in paragraph 29.

3 30. This answering defendant admits that plaintiff sent correspondence  
4 dated November 23, 2009, which speaks for itself. This answering defendant  
5 denies the remainder of the allegations in paragraph 30.

7 31. This answering defendant denies the allegations in paragraph 31.

8 32. This answering defendant denies the allegations in paragraph 32.

9 33. This answering defendant denies the allegations in paragraph 33.

10 34. This answering defendant admits it filed an Application for Writ of  
11 Garnishment in the District Court for the County of Snohomish and served Notice  
12 to plaintiff at plaintiff's last known address at that time.

13 35. This answering defendant lacks sufficient information to admit or  
14 deny the allegations in paragraph 35 and, therefore, denies the same.

15 36. This answering defendant admits that garnishment proceedings were  
16 filed in the same judicial district in which the underlying judgment had been  
17 entered in accordance with RCW 6.27.020. This answering defendant lacks  
18 sufficient knowledge to admit or deny the remainder of the allegations in  
19 paragraph 36 and, therefore, denies the same.

1       37. As it is unclear as to the time frames plaintiff is referring to in  
2 paragraph 37, this answering defendant is unable to fully admit or deny the  
3 allegations. This answering defendant admits that sometime in late 2009, which is  
4 after garnishment proceedings had commenced, it became aware that plaintiff was  
5 residing in Spokane and received a letter from plaintiff dated November 23, 2009  
6 with a Spokane address. This answering defendant further admits that garnishment  
7 proceedings continued in Snohomish County pursuant to RCW 6.27.020.  
8

9  
10       38. This answering defendant denies the allegations in paragraph 38.

11       39. This answering defendant admits they continued efforts to collect on  
12 the default judgment after receiving plaintiff's letter of November 23, 2009. This  
13 answering defendant denies the remainder of the allegations in paragraph 39.  
14

15       40. This answering defendant admits that plaintiff brought action to  
16 vacate the default judgment in Snohomish County through different counsel.  
17 Plaintiff's motion was set for June 18, 2010 and at that time the court continued the  
18 matter until such time as plaintiff wished to reset the hearing. As of this time,  
19 plaintiff has failed to reset the hearing and there are no pending motions before the  
20 court.  
21

22 //

**COUNT I**  
**VIOLATION OF THE FDCPA, §1692g(a)**

41. This answering defendant repeats and re-alleges every answer set forth above.

42. This answering defendant denies the allegations in paragraph 42.

43. This answering defendant denies the allegations in paragraph 43.

44. As the allegations contained in paragraph 44 are not directed to this defendant, this answering defendant deems that no response is necessary.

This answering defendant denies plaintiff is entitled to the relief requested.

**COUNT II**  
**VIOLATION OF THE FDCPA, §1692g(b)**

45. This answering defendant repeats and re-alleges each and every answer set forth above.

46. This answering defendant denies the allegations in paragraph 46.

47. This answering defendant denies the allegations in paragraph 47.

48. As the allegations contained in paragraph 48 are not directed to this defendant, this answering defendant deems that no response is necessary.

This answering defendant denies that plaintiff is entitled to the requested relief.



**COUNT III**  
**VIOLATION OF THE FDCPA, §1692i(a)(2)**

49. This answering defendant repeats and re-alleges each and every answer set forth above.

50. This answering defendant denies the allegations in paragraph 50 and further asserts it acted in conformance with RCW 6.27.020.

51. As to the allegations in paragraph 51, they are allegations of law and do not necessitate an answer; therefore, this answering defendant denies the same. To the extent an answer is required, this answering defendant denies the allegations in paragraph 51.

52. This answering defendant admits that it became aware sometime in late 2009 that plaintiff was residing in Spokane, Washington. This answering defendant denies the remainder of the allegations in paragraph 52.

53. This answering defendant denies the allegations in paragraph 53.

54. As the allegations contained in paragraph 54 are not directed to this defendant, this answering defendant deems that no response is necessary.

This answering defendant denies plaintiff is entitled to the requested relief.

//

**COUNT IV**  
**VIOLATION OF THE FDCPA, §1692f**

55. This answering defendant repeats and re-alleges each and every answer set forth above.

56. Paragraph 56 does not appear to contain any factual allegation that requires a response.

57. As to the allegations in paragraph 57, they are allegations of law and do not necessitate an answer; therefore, this answering defendant denies the same. To the extent an answer is required, this answering defendant denies the allegations in paragraph 57.

58. As to the allegations in paragraph 58, they are allegations of law and do not necessitate an answer; therefore, this answering defendant denies the same. To the extent an answer is required, this answering defendant denies the allegations in paragraph 58.

**Defendants Violated 15 U.S.C. § 1692f In Seeking Entry Of Judgment  
Against Plaintiff Absent Necessary And Proper Notice Of The Same**

59. This answering defendant denies the allegations in paragraph 59.

60. This answering defendant admits the allegations in paragraph 60.

61. This answering defendant denies the allegations in paragraph 61.

1       62. This answering defendant denies the allegations in paragraph 62.

2       63. This answering defendant admits the allegations in paragraph 64.

3       64. This answering defendant admits that plaintiff contacted them in  
4       October of 2009. This answering defendant denies the remainder of the allegations  
5       in paragraph 64.

6       65. This answering defendant denies the allegations in paragraph 65.

7       66. This answering defendant denies the allegations in paragraph 66.

8       67. This answering defendant lacks sufficient information to admit or  
9       deny the allegations in paragraph 67 and therefore denies the same.  
10       

11       **Defendants Violated 15 U.S.C. § 1692f In Purposefully Delaying Efforts**  
12       **To Collect The Subject Debt**  
13       

14       68. This answering defendant denies the allegations in paragraph 68.

15       69. As the allegations contained in paragraph 69 are not directed to this  
16       defendant, this answering defendant deems that no response is necessary.  
17       

18       70. This answering defendant denies the allegations in paragraph 70.

19       71. This answering defendant denies the allegations in paragraph 71.

20       72. This answering defendant denies the allegations in paragraph 72.

21       73. This answering defendant denies the allegations in paragraph 73.  
22

**Defendants Violated 15 U.S.C. § 1692f In Failing To Provide Plaintiff  
With Notice Of Writ Of Garnishment As Required By Washington Law.**

74. Upon information and belief, plaintiff has correctly cited RCW 6.27.130.

75. This answering defendant lacks sufficient information to admit or deny the allegations in paragraph 75 and therefore denies the same.

76. This answering defendant denies the allegations in paragraph 76.

77. As the allegations contained in paragraph 77 are not directed to this defendant, this answering defendant deems that no response is necessary.

This answering defendant denies plaintiff is entitled to the requested relief.

**TRIAL BY JURY**

78. Answering defendant is entitled to and hereby demands a trial by jury.

**AFFIRMATIVE DEFENSES**

Further answering Plaintiff's Complaint and by way of affirmative defenses, these answering Defendants alleges as follows:

1. Plaintiff's claims, in whole or in part, fail to state claims upon which relief can be legally granted against this answering defendant.

1           2.     Plaintiff's claims are barred by the doctrines of unclean hands,  
2 estoppel, laches and/or waiver.

3           3.     Plaintiff's claims, in whole or in part, are barred by the applicable  
4 statute of limitations.

5           4.     If Plaintiff suffered any damage, it was the direct and proximate result  
6 of intervening, superseding acts or omissions not attributable to this answering  
7 defendant.

8           5.     Any damage as alleged in Plaintiff's Complaint was a direct and  
9 proximate result of the fault of the Plaintiff.

10          6.     If Plaintiff sustained any injury or damage, the same was the direct  
11 and proximate result, in whole or in part, of other Defendants in this action.

12          7.     Any damages as alleged in Plaintiff's Complaint were a direct and  
13 proximate result of third persons over whom this answering defendant had no  
14 control or right to control.

15          8.     Plaintiff has failed to mitigate damages, if any.

16          9.     This answering defendant specifically denies any violations of 15  
17 U.S.C. § 1692, et seq. Notwithstanding the foregoing, any alleged violation of said  
18 statute was not intentional and resulted from a bona fide error notwithstanding the  
19

1 maintenance of procedures reasonably adopted to avoid any such alleged error.  
2 Therefore, Defendants are not liable pursuant to 15 U.S.C. § 1692k(c).

3       10. This answering defendant maintained business or due diligence  
4 routines intended, in whole or in part, directly or indirectly, to avoid the acts,  
5 practices or omissions complained of.

6       11. Any technical violation of the FDCPA proven by the Plaintiff will not  
7 support an award of reasonable attorney's fees without establishment of actual or  
8 additional damages.

9       12. Plaintiff's causes of action against this answering defendant are barred  
10 because each claim is subject to the defense that all acts of defendant were  
11 performed in good faith and without intent to harm Plaintiff.

12       13. This answering defendant reserve the right to seek amendment of  
13 these pleadings to assert additional answers, affirmative defenses, counterclaims,  
14 cross claims, or third party claims justified by the facts of this case as learned in  
15 discovery, and/or abandon those which are not supported by the facts.

16       WHEREFORE having fully answered Plaintiff's Complaint and having  
17 asserted affirmative defenses, this answering defendant prays for the following  
18 relief:  
19

1           1.     That the Complaint be dismissed or that judgment be entered in its  
2 favor on the allegations stated therein.

3           2.     That this answering defendants receive its costs of suit and  
4 disbursements incurred herein, including statutory attorney fees, and if appropriate,  
5 reasonable attorney fees.

6           3.     That this answering defendant be granted leave to amend these  
7 pleadings to assert additional answers, affirmative defenses, counterclaims, cross  
8 claims, or third party claims justified by the facts of this case as learned in  
9 discovery and/or abandon those which are not supported by the facts.

10          4.     That this answering defendant receive such other and further relief as  
11 the Court deems just and proper.

12                 DATED this 25th day of February, 2011.

13  
14  
15  
16                         s/Kevin J. Curtis, WSBA No. 12085  
17                         WINSTON & CASHATT, LAWYERS, a  
18                         Professional Service Corporation  
19                         Attorney for Defendants  
20                         601 W. Riverside, Ste. 1900  
21                         Spokane, WA 99201  
22                         (509) 838-6131  
23                         Facsimile: (509) 838-1416  
24                         E-mail Address: [kjc@winstoncashatt.com](mailto:kjc@winstoncashatt.com)

1 I hereby certify that on February 25, 2011, I electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following:  
4

5 Jon N. Robbins  
6 Weisberg & Meyers  
7 jrobbins@attorneysforconsumers.com

8 Attorney for Plaintiff

9 Daniel N. Gordon  
10 Daniel N. Gordon, P.C.  
11 Dgordonpc@aol.com

12 Attorney for Defendant Asset Acceptance, LLC  
13

14 s/Kevin J. Curtis, WSBA No. 12085  
15 WINSTON & CASHATT, LAWYERS, a  
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